IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

WA.No. 351 of 2000(A)

AGAINST THE JUDGEMENT IN OP.22444/1998
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APPELLANT:

P.K.Balakrishnan, Junior Employment Officer,
District Employment Exchange, Malappuram.

BY ADV. SRI.N.SUGATHAN

RESPONDENTS:
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1. K.Geethakumari, Employment Officer (Placement),
   Town Employment Exchange, Neyyattinkars,
   Thiruvananthapuram Dist.

2. State of Kerala, represented by its Chief Secretary, Secretariat,
   Thiruvananthapuram.

3. The Director, National Employment Service, Thiruvananthapuram.

4. R.Rajan, Employment Officer, Town Employment Exchange,
   Kottarakkara.

5. The Administrative Officer, Directorate of Employment,
   Thiruvananthapuram.

6. K.S.Aswinkumar, Head Clerk, District Employment Exchange,
   Wayanad, Kalpetta.

7. T.V.Bahulaya Panicker, Junior Emplyment Officer (On deputation),
   Directorate of Employment, Thycaud P.O., Thiruvananthapuram.

8. K.Sreedharan, Arun Nivas, Kadappa, Mainakappally, Kannathur, Kollam.

9. L.Rajeswari Amma, Junior Employment Officer, Directorate of Employment, Thycaud P.O., Thiruvananthapuram.

10. A.K.Ushakumari, Employment Officer (OR), Directorate of Employment, Thycaud P.O., Thiruvananthapuram.

11. Asokan R. L.D. Clerk, Directorate of Employment, Thycaud P.O., Thiruvananthapuram.

12. Piravi Perumal Pillai A., Employment Officer, Directorate of Employment, Thycaud P.O., Thiruvananthapuram.

13. Sivakumar V.S., Head Clerk, Town Employment Exchange, Nedumangad.

14. Mohammed Abdul Vahab E., U.D. Clerk, Directorate of Employment, Thiruvananthapuram.

BY ADV. SRI.G.S.REGHUNATH
SRI.C.P.SUDHAKARA PRASAD FOR R1
SRI.ELVIN PETER
SRI. S.RAMESH
SRI.P.N.SANTHOSH
GOVERNMENT PLEADER SRI. BENNY GERVASIS FOR R2&R3

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 21/06/2007, ALONG WITH WA NO. 352 OF 2000, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.S.Radhakrishnan
&
Antony Dominic, JJ.
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W.A.Nos.351 & 352 of 2000
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Dated this the 21st day of June, 2007.

JUDGMENT

Radhakrishnan,J.

Writ Appeal No.351 of 2000 arises out the judgment in O.P.No.22444 of 1998 and Writ Appeal No.352 of 2000 arises out of the judgment in O.P.No.23016 of 1998. Both the Original Petitions were disposed of by a common judgment dated 23rd November, 1999. In both the Original Petitions, the challenge was against the revision of seniority list of Lower Division Clerks. O.P.No.22444 of 1998 was preferred challenging Ext.P19 final seniority list of Lower Division Clerks in the National Employment Service Department. From 13.1.1972 to 31.12.1997.

2. In Ext.P19, reference was made to a judgment of this Court in O.P.No.13096 of 1997. One Sherafudheen, Junior Employment

Officer filed O.P.No.13096 of 1997 seeking a writ of mandamus directing the respondents therein to finalise the seniority list of Head Clerks, U.D. Clerks and Translators in the Employment Service Department strictly adhering to G.O.(MS) 4/61 dated 2.1.1961 and Rule 27(a) of the K.S. & S.S.R. and for a writ of mandamus directing the respondents to review the promotions already made in the post of U.D. Clerks, Head Clerks, Junior Superintendents and Employment Officers after finalising the seniority list. It was pointed out before this Court that in the provisional seniority list many of the persons who had got inter-district transfers were shown as seniors to the petitioners, which according to the petitioners is illegal. Further it was also contended that steps have been taken to finalise the provisional seniority list. State Government also produced Ext.R1(a) letter dated 11.7.1997 stating that persons who were given inter-district transfers would be ranked junior-most in the new district on their transfer. Original Petition was disposed of directing the respondents to finalise the provisional seniority within four months from the date of receipt of a copy of the judgment. Government subsequently finalised Ext.P19 seniority list.

3. Petitioners referred to the decision of the Apex Court reported in **Rabindra Nath** v. **Union of India** – A.I.T. 1970 S.C. 470 and also

the decision in **Sreedharan Pilla**i v. **State of Kerala** - 1973 K.L.T. 151. Counsel for the contesting respondents referred to a recent judgment of the Supreme Court reported in **Sudhakaran** v. **State of Kerala** - 2006 (2) K.L.T. 817 and submitted that the issue raised in this case is covered by the judgment, the operative portion of the same reads as follows:

> "The transferred LDCs next submitted that the intention of making a provision that a person on an 'own request' transfer will be ranked as the juniormost in the new district or new unit, is to ensure that the seniority of the existing employees in the category in the new unit or district is not affected by a senior person coming from outside by transfer. It is contended that where the promotion post is State-wise, the seniority of the existing employees in the district to which the outside employee is transferred, will not be affected and, therefore, where the promotion is to a State-wise post, proviso to Rule 27(a) which requires those who are transferred on 'own request', to give up their seniority, will not apply. We cannot agree. The alleged intention behind a provision, cannot be used to defeat the express words of the provision. Once a statutory rule is made, without providing any exceptions, it is not possible to carve out exceptions to such rule, by judicial interpretation. Nor can an exemption from application of a clear and specific rule be claimed on the ground of hardship or similar reasons. The proviso to Rule 27(a) of

> the Rule is categorical and applies to all employees transferred on own request. It does not make distinction between employees whose promotion post is a State-wise post and those where the promotion posts are district-wise post."

We are of the view that when we apply the above said principle to the facts of this case, it is clear that Government have correctly prepared Ext.P19 seniority list. In paragraph 17 of the above decision it is stated as follows:

> "The learned counsel for the contesting private respondents lastly submitted that by now the appellants and the contesting private respondents have all been promoted from the posts of LDC to UDC and several of them have also been promoted as Sub Registrars and the matter should not be unsettled after such a long time. We find that the matter has been continuously under litigation ever since 1990 and the delay in disposal cannot defeat the rights of appellants."

We make it clear that so far as this case is concerned, the provisional seniority list of Lower Division Clerk was finalised in the year 1998. Petitioners claim for the higher post was not considered. However, we make it clear that possibility of accommodating the writ petitioners without disturbing the promotions already made to may be considered by the authorities. Otherwise, the issue raised is fully covered by the

judgment of the Apex Court in **Sudhakaran's Case** (supra).

Writ Appeals are therefore allowed and the judgment of the learned single Judge is set aside.

K.S.Radhakrishnan,
Judge.

Antony Dominic,
Judge.

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